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Re: Lower Passaic River Remedial Design

Dear Juan:

I write in response to your letter of April 26.

My clients Occidental Chemical Corporation ("OxyChem"), Maxus Energy Corporation ("Maxus"), and Tierra Solutions, Inc. ("Tierra") remain convinced that Region 2's approach of focusing solely on efforts to have OxyChem be the sole performing party for the remedial design for the Lower 8.3 Miles of the Lower Passaic River ("LPRSA") is not the right approach for a number of reasons, as we have discussed. While we remain in disagreement with Region 2 regarding this approach, we recognize that Region 2 has considered our concerns and clarified in its second letter that OxyChem will not be the sole target of future enforcement measures related to the LPRSA and that Region 2's focus on OxyChem is driven by considerations that include EPA's desire to move quickly and EPA's recognition of OxyChem's proven track record of cooperation and efficiency.

We also recognize Region 2's language encouraging my clients reach out to other parties responsible for contaminants of concern present in the LPRSA regarding potential funding of the remedial design effort. While we remain concerned that Region 2's current focus on OxyChem will make the effort much more difficult, we are nevertheless attempting to form a small group of parties to contribute to the substantial remedial design program set

forth in the draft SOW, as the April 26 letter encouraged us to do. This will not only facilitate the process regarding the remedial design, which is Region 2's goal, but also mitigate the financial consequences that my clients would bear as a result of effectively financing the obligations of more than 100 other parties during the multi-year remedial design program contemplated by the draft SOW. We will keep Region 2 informed regarding the status of our effort.

Also, we would like to accept the invitation in the April 26 letter regarding a near-term meeting with Region 2 to discuss these matters. As you know, Region 2 has set a very aggressive deadline—three weeks, ending on May 17—for OxyChem to respond to Region 2's letter regarding whether it is willing to enter negotiations for the remedial design work on the basis of the draft AOC and SOW provided by Region 2.

Based on our preliminary review of these documents, we have identified a number of questions that we would like to discuss with Region 2 well in advance of that deadline so that we can analyze all of the relevant facts, inform and make recommendations to senior management, obtain all necessary internal approvals, and formulate our response. Because the issues raised by Region 2's proposal are being evaluated by different members of our team, with expertise in different disciplines, we believe that the most efficient process would involve several working group meetings to address particular topics, as follows:

- A meeting this week (either May 5, 6, or 7) to discuss our ideas about the composition of a small group representative of the eight contaminants of concern identified in the Record of Decision and the status of our efforts to reach out to additional parties for the purpose of involving them in a small group for in the remedial design process.
- A technical meeting next week (either May 9, 10, 11, 12, or 13) to seek clarification on a number of ambiguities, omissions and questions we have regarding draft scope of work.
- A legal meeting next week (either May 11, 12, or 13) to seek clarification on a number of ambiguities, omissions and questions we have regarding the legal aspects of the draft AOC.

We are ready, willing, and able to have our representatives come to Region 2's offices in Manhattan to allow these meetings to take place. If this approach is acceptable to you, please let me know what dates and times would work for Region 2 for each of these working groups.

Very truly yours,

Benjamin S. Lippard
Benjamin S. Lippard *Kmm*